No. 887 SUPREME COURT, U. S.

APR 2 1958

JOHN T. FEY, Clerk

IN THE

UNITED STATES COURT OF APPEALS

for the Fourth Circuit

No. 7543

COUNTY SCHOOL BOARD OF ARLINGTON COUNTY, VIRGINIA, AND T. EDWARD RUTTER, DIVISION SUPERINTENDENT OF SCHOOLS OF THE COUNTY OF ARLINGTON, VIRGINIA,

*Appellants,*

v.

CLARISSA S. THOMPSON, ET AL.,

*Appellees.*

*Appeal From The United States District Court For The Eastern District of Virginia, Alexandria Division.*


Lunsford C. Brown,
1200 Commerce Street,
Alexandria, Virginia.

Oliver W. Hill,
111 East Leigh Street,
Richmond 19, Virginia.

Spottswood W. Robinson, III,
623 North Third Street,
Richmond 19, Virginia.

*Counsel for Appellees.*

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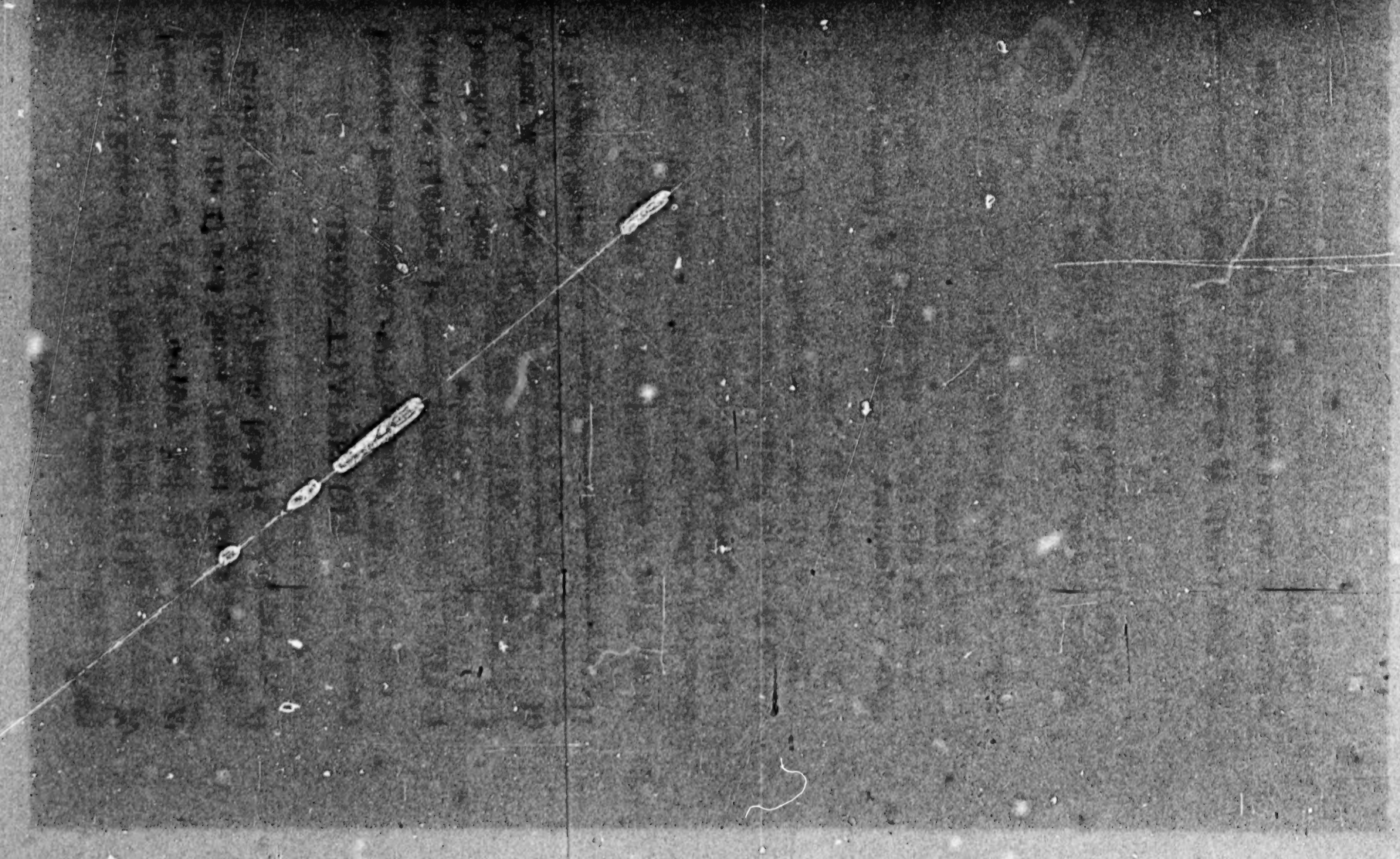

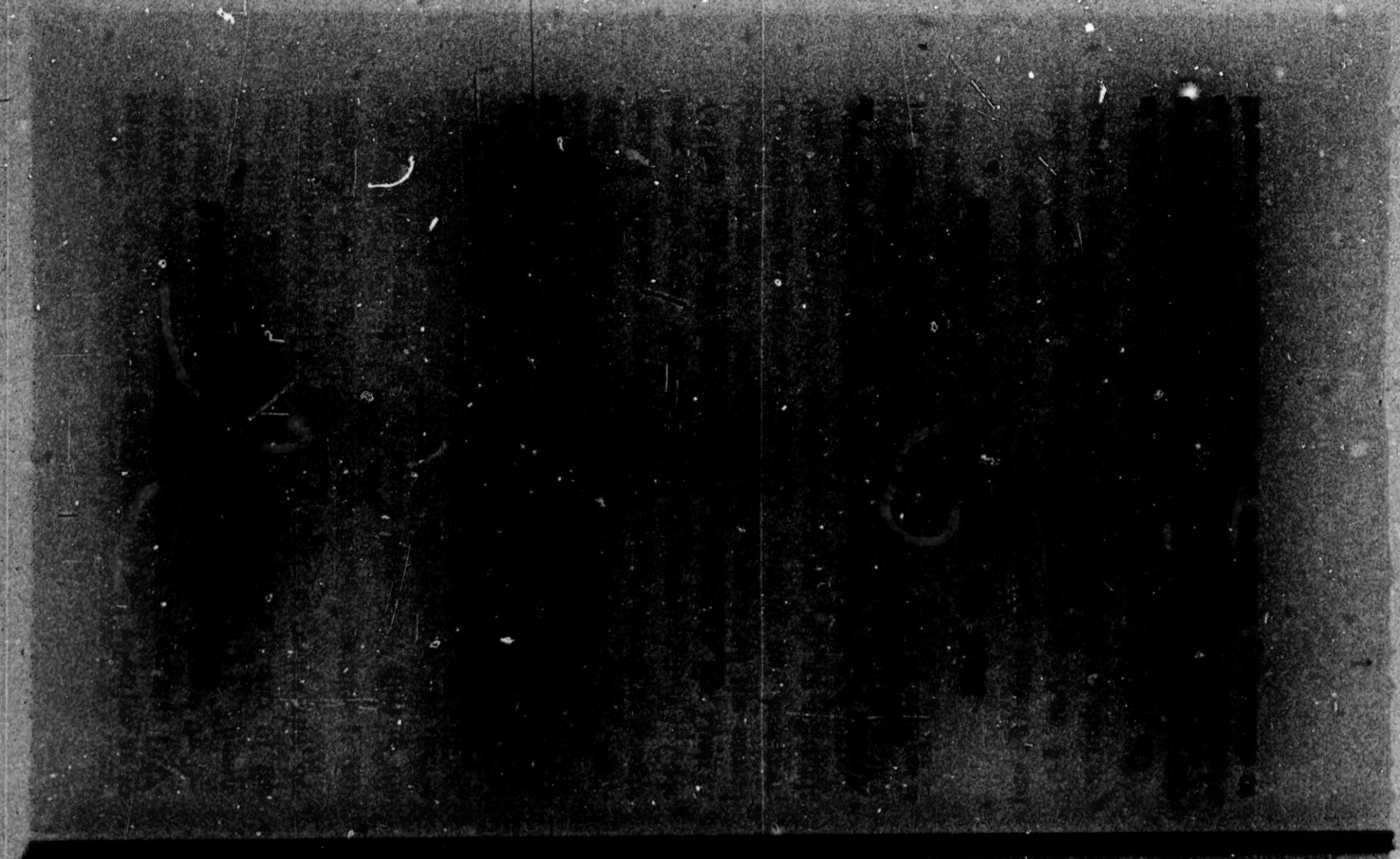

[redacted] administrative proceeding is prescribed

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[redacted]

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> [Pupil Placement] Board for school-assignment. The reason is that the form prescribed therefor commits the applicant to accept a school 'which the Board deems most appropriate in accordance with the provisions' of the Pupil Placement Act. Submission to that Act amounts almost to assent to a racially segregated school. But even if the form be signed 'under protest,' the petitioner would not have an unfettered and free tribunal to act on his request. The Board still deliberates, on a racial question, under threat of loss of State money to the applicant's school if children of different races are taught there." (App. 19-20).

We believe that the precedents established by this Court are dispositive of the issue raised by appellants, and that the District Court was clearly correct in its conclusion. While *Athins* involved the contention that the Act's administrative remedies must be pursued, we think that it was implicit in that decision that the attempted transfer of school assignment powers would not benefit the local school authorities. The provision of the Act undertaking to remove those powers from local school boards and to place them in the Placement Board was, of course, enacted legislation at the time of the District Court decrees in those cases and at the time of the hearing and disposition of the appeals here. There appears to be no suggestion, either in the briefs or the opinions, that this displacement could be successful unless the remedies themselves were adequate. It seems quite anomalous that appellees could be deprived of their constitutional rights on the ground that the only agency empowered to grant them is an agency their remedies before which are inadequate to afford those rights.

We cannot agree with appellants in their contention that the issue is non-Federal in character and should await a definitive decision of the Supreme Court of Appeals of Virginia. It would perhaps suffice to point out that on December 2, 1957, that Court decided *DeFebio v. County School Board of Fairfax County* without ruling on the point raised by the appellants here. But we consider that the answer is even more fundamental. The provision seeking transfer of the enrollment authority is not only a part of a statute containing no severability clause, but is also inextricably bound to the remedies themselves. Indeed, the point seems but the resurrection in slightly new form of the same argument that was unavailing in the *Aaron* and case. We do not have the simple question whether the state has power to transfer the admission power from schools boards to a central agency, but are again faced with the old question whether these applicants are to be remitted to a procedure before an agency that could not afford the relief to which they are legally entitled. As we understand, this insistance upon a state statutory bar to the exercise of a Federal right necessarily presents a Federal question.

B

The rights of Arlington children to nonsegregated schooling were judicially established prior to the enactment of the Pupil Placement Act. Upon the first appeal in this action, *County School Board of Arlington County v. Thompson*, 240 F. 2d 59 (1956), this Court had under review the decree whereby this was accomplished. The District Court then provided:

"... it is further *Adjudged, Ordered* and *Decreed* that effective at the times and subject to the conditions

hereinafter stated, the defendants, their successors in office, agents, representatives, servants and employees be, and each of them is hereby, restrained and enjoined from refusing on account of race or color to admit to, or enroll or educate in, any school under their operation, control, direction, or supervision any child otherwise qualified for admission to, and enrollment and education in, such school." (R. 181).

As the Court knows, it was at the 1956 extra session of the General Assembly that the Pupil Placement Act was passed. It did not become law until the latter part of December, 1956. Thus, as the District Court stated:

> "It must be remembered that we are viewing the Act in a different frame from the setting in which it was tested by the Court of Appeals. The Act was then appraised as an administrative remedy which had to be observed before the persons aggrieved could seek a decree of judicial relief. Now the Act is measured against the enforcement of a decree already granted. It is, too, a decree which was passed before the adoption of the Placement Act and bears the approval of the final courts of appeal." (App. 19).

We submit that the prohibitions of the injunction could not be avoided by the simple expedient of an undertaking to transfer the assignment power from the school board to the Placement Board. We think that the District Court was eminently correct in its conclusion in this regard:

> "The court must overrule the claim of the County School Board and Superintendent that they should not be held to answer for the denial of admittance to the

plaintiffs. In this they urge that the Placement Board had sole control of admissions—that the School Board and Superintendent had been divested by the Act of every power in this respect. As just explained, the Placement Act and the assignment powers of the Placement Board are not acceptable as regulations or remedies suggesting direct obedience of the injunction. In law the defendants are charged with notice of these infractions in the Board's authority. Actually the plaintiffs were denied admission by the defendants' agents—the school principals—while the defendants had the custody and administration of the schools in question.

"Hence, the refusal by the defendants, immediately or through their agents, to admit the applicants cannot here be justified by reliance upon the Placement Board. The defendants were responsible, also, with knowledge that the injunction was binding on the Placement Board. The latter was the successor to a part of the School Board's prior duties; as a successor in office to the School Board, the Placement Board is one of those specifically restrained by the injunction." (App. 20).

See also *Tate* v. *Department of Conservation & Development*, 231 F.2d 615 (C. A. 4th 1956), *cert. denied* 352 U. S. 838 (1956).

## II

## The Pleadings And Proof Were Sufficient To Justify The District Court In Granting Appellees The Relief Sought.

The motion for further relief and the complaint in intervention each alleged that the children involved made timely

application to appellants for admission for the 1957-58 school session to a public school in the county theretofore maintained for and attended by white children only; that each such child was denied admission to such schools on the ground that the Placement Act deprived appellants of authority to admit such children to such schools; and that defendants denied each such child who had ever applied to the Placement Board for assignment admission to any public school in the county (App. 5, 9). Each further alleged that it would have been futile for any such child to apply to the Placement Board in an effort to obtain a racially non-segregated education (App. 5-6, 9-10). These allegations, hardly disputed by appellants, are fully sustained by the evidence, and both allegations and proof, viewed in the light of their factual antecedents, establish a deprivation of appellees' constitutional rights solely on the basis of their race.

A

Arlington County maintains 4 schools for Negroes (Tr. 111-112, 113, 114) and more than 45 for whites (Tr. 114-115). Prior to the current school session, the school authorities had formulated boundaries of five areas, denominated "districts," to be respectively served by the various schools, and admission to each school was restricted to pupils residing in the district served by that school and, of course, was further restricted by the practice of racial segregation.

There were 3 elementary and 1 secondary school districts for Negroes (Tr. 112-119, 123; Pl. Ex. 8, 9). The Negro secondary school district was unique in its division into two geographical parts, not contiguous, the centers of which were five or six miles apart, served by a combination junior-

senior high school, located in the southern portion of the two-part district, which was and is the sole secondary facility for Negroes in the county (Tr. 112-113, 117-119; Ex. 8).

The classification of school districts as white or Negro was purely a matter of race (Tr. 119, 123, 124), and was a long standing practice (Tr. 111, 131). The boundaries of white school districts were fixed in terms of the capacity of school buildings to house a given number of children (Tr. 119-120). To the extent to which a white school facility could accommodate the children in that area, the district boundaries were arranged so that the white child could go to the school nearest his residence.

Upon the opening of schools for the current session, the school authorities followed instructions issued by the Division Superintendent to principals of the various schools in attempted compliance with the requirements of the Placement Act, to decline admission of any child who had not applied to the Placement Board for assignment in any instance where the Placement Act required such application (Tr. 124-126). Principals were instructed not to assign new pupils, or those graduating or seeking transfer from one school to another; placement of all such children, if accomplished at all, must be done by the Placement Board (Tr. 125). All other children were necessarily frozen in the schools they previously attended (Tr. 133).

The county school authorities last formulated district boundaries for use during the 1956-57 school session, and presumably were adopted by the Placement Board in making the assignments it did for the current session (Tr. 132-133, 134). It assigned more than 2,000 Arlington children

(Tr. 128-129), and all schools remained segregated—actually attended by all-white or all-Negro student bodies (Tr. 129-130). There is no known instance of an assignment of any student of either race to a school attended by a student of the other race.

B

In August of 1957, four of the five adult appellees endeavored to arrange for the admission of their children to a public school within the established school districts in which they resided.

Appellee Robert A. Eldridge, Jr., after being advised by a school principal that he would have to make application to the Pupil Placement Board to secure the registration of his son in an Arlington County Public School, went to the office of the Arlington County School Board and endeavored to see the Division Superintendent of Schools. He did not see Dr. Johnson, the Superintendent, but explained his situation to [illegible] and stated that he would have to proceed through the Pupil Placement Board. Eldridge then obtained a letter to the Pupil Placement Board in which he identified his proposed school and asked to get his son registered in school. He also left a statement that he had not signed the pupil placement forms, and requested that, in view of the decision of this Court concerning applications to the Pupil Placement Board, the Superintendent register his son in the public school nearest his home or advise him where he could have him registered in such school. (Ex. 3.) On each occasion when he sought to register his son he had available the son's birth certificate and a copy of his previous scholastic record. Fillmore Elementary

School is one block and a half from the Eldridge home and the Hoffman-Boston School, a Negro facility, is four or five miles distant.

Early in August, Mrs. Phyllis S. Costley, the mother of Louis G. Turner and Melvin H. Turner, infant appellees, procured a map of the Arlington County School districts and, [illegible] that the Swanson Junior High School was the nearest junior high school to their residence, she then attempted to have the two enrolled in that school. The principal refused to enroll them. Mrs. Costley advised Mr. Rutter, the Superintendent, of these facts and requested him to have these children enrolled in Swanson Junior High School as the junior high school nearest their home. (Ex. 6.) Swanson Junior High School is not much more than three quarters of a mile from the Costley residence and Hoffman-Boston is about six or seven miles distant. On opening day of school the children were again refused admission to Swanson Junior High School, but subsequently on that same day they were admitted to Hoffman-Boston High School, without fee, or duty to [illegible] pupil placement application.

On August 28, 1957, Mrs. Dorothy Hansen sought to have her son, Leslie Hansen, Jr., enrolled in Stratford Junior High School and was advised that application would have to be made to the local Electoral Board. She and her husband then went to the Board's office. They were unable to see him personally, but were able to talk to him over the telephone. Mr. Rutter told them that the only means of registering the child was by signing the pupil placement form. Soon thereafter, Mrs. Hansen wrote Mr. Rutter a letter again requesting the enrollment of her son in Stratford Junior High School. On opening day of school, Leslie

Hamm, Jr. was again refused admission to Stratford Junior High School. Neither Mr. nor Mrs. Hamm signed the pupil placement form and at the time of the hearing Leslie was not enrolled in any school. Stratford is about a half mile from the Hamm residence and Hoffman-Boston is about six miles distant.

About August 19, 1957, Mrs. Dorothy P. Nelson and her son, George Tyrone Nelson, completed a pupil placement application form and submitted it to Mr. Richmond, the principal of Stratford Junior High School. They never received any reply to the application. On opening day, George Tyrone Nelson sought admission to Stratford Junior High School and was denied. Stratford is a half mile from the Nelson residence and Hoffman-Boston is six miles distant.

Dr. Harold M. Johnson was the only one of the adult appellees who did not make a good faith effort to enroll his children. He and his family had been away from the United States from July 27, 1957, until the day before Labor Day. He refused to sign a pupil placement form because he felt that it would prevent his children from attending the school nearest them and that even if he signed the forms his children would not be accepted. At the time he applied to Washington-Lee High School for the enrollment of his daughters he had their promotion slips and cumulative records available to hand over to the proper authorities.

C

In the foregoing circumstances, we submit that the District Court was absolutely correct in finding and concluding that

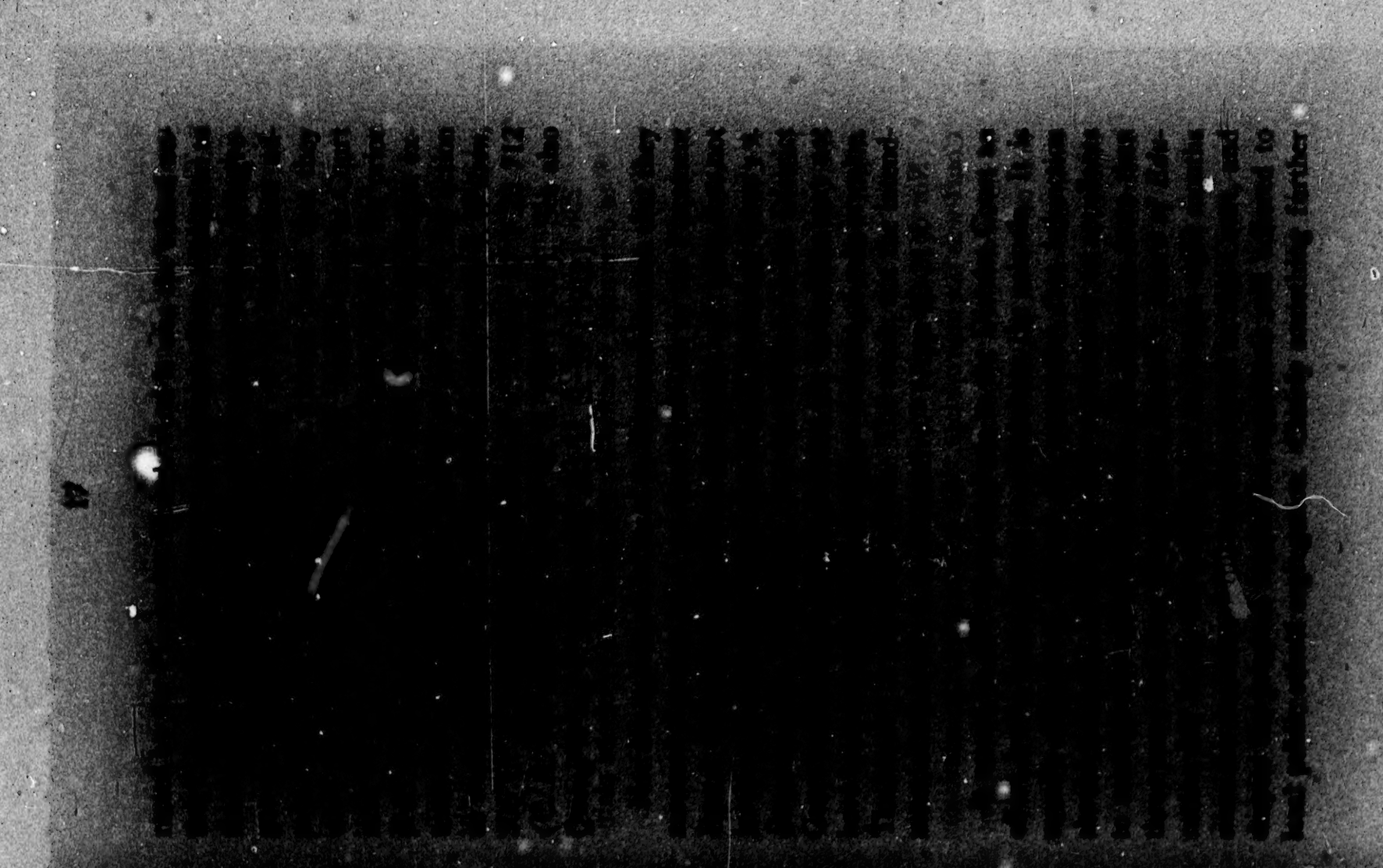
"Nothing in the evidence indicates that any of the plaintiffs is not qualified in his studies to enter the school which he sought to enter. Each applicant applied to a 'white' school but each lives in the district of that or of another nearby 'white' school. Nor did the evidence reveal a lack of room for him, or that the school did not afford the courses desired by the applicant. Counsel for the defendants explained that they did not address evidence as to the qualifications of the applicants for their respective schools because this was a matter within the province of the Placement Board. Anyway, no indication of disqualification appeared as to any applicant.

"A review of the evidence is convincing that the only ground upon which the provisions of the Plan were met by the objection of the plaintiffs was that they were of the Negro race. The objection was simply the application of the prior practice of segregation. No other ingredient can be considered in any of the seven instances." (App. 68).

Nor can the pre-assignment of the seven made by the Placement Board be justified as usual. George T. Nelson filed out a placement application and submitted it to the principal of Stratford Junior High School. The Placement Board assigned him to Stratford Junior High School. The Board assigned him to Stratford Junior High School. The applicants denied him admission to Stratford. The evidence is one-half mile from [illegible] Junior High School is about six miles away. As the District Court remarked:

"The basis for Mr. Nelson's placement is not given; no reason is evident for ignoring Stratford or Swan-

[redacted]



Z

Appellants' claim to prior notice of granting intervention, and to opportunity to answer the intervention complaint, could have substance only if in fact the intervention would be opposed, and the intervention complaint would be answered. In *Allen* v. *County School Board of Prince Edward County,* ..... F. 2d ..... (C. A. 4th, No. 7463, November 11, 1957), intervention was permitted, without objection, on the date of hearing without any claim for an opportunity to answer or any answer in fact (Appellants' Brief, p. 3.) One of the counsel representing appellants in this case represented one of the defendants there. And in the very case now before the Court, a previous intervention was permitted on the date of the hearing of July 31, 1956, without objection, and without any effort to seek or make an answer (Appellants' Appendix, No. 7310, p. 9). Indeed, the 1957 intervention complaint here presented no question that the original complaint and the motion for further relief had not already made an issue in the case.

Nor do we think that there was any impropriety in the manner in which the claims of the seven children were presented and heard. The original proceeding, which was reviewed here, was a class action (R. 3). The original injunction, entered July 31, 1956, restrained the school authorities from refusing, on racial grounds, the admission to any school of "any child otherwise qualified for admission to, and enrollment and education in, such school." (R. 181). The Court therein retained jurisdiction with power to enlarge or otherwise modify the injunctive provisions (R. 182). Three of the seven children now before the Court on this appeal were original plaintiffs, and the other four are members of the class on behalf of whom the action was initiated. Although the injunction imposed the requirement that adequate administrative remedies be exhausted before

litigation, it is clear that, within this limitaton, those originally parties plaintiff could appropriately seek further relief, and members of the class on whose behalf the action was brought should be permitted thereafter to intervene in order to participate in the benefits thereof. *Wolpe* v. *Poresky*, 79 App. D. C. 141, 144 F.2d 505 (1944), *cert. denied* 323 U. S. 777 (1944); *Wilson* v. *City of Paducah*, 100 F. Supp. 116 (W. D. Ky. 1951); *American Brake Shoe & Foundry Co.* v. *Interborough Rapid Transit Co.*, 3 F. R. D. 162 (S. D. N. Y. 1943). See also *Allen* v. *County School Board of Prince Edward County*, ..... F.2d ..... (C. A. 4th, No. 7463, November 11, 1957).

The claims of each of the seven children presented common questions of law and fact, and sought the same character of relief. The only defense offered was that the Pupil Placement Act had disabled the appellants from assigning them, and the questions whether this defense was valid, and whether the denials of admission were indeed a consequence of their race, were the legal issues in each instance. The only factual questions were whether the applicants were qualified to enter the schools to which they applied, and were denied admission thereto, and these were common to all cases, and hardly subject to dispute. And in each case there was sought a further decree specifically directing their admission to those schools. Although the seven children were presenting their individual grevances for determination, their respective claims, objectives and interests were common both to the main action and to each other. We submit that the District Court correctly permitted intervention and heard and determined these claims in the manner presented.

While appellants seem to now intimate (Brief, p. 11) that they were precluded by the procedure adopted below from

offering evidence, the point does not seem to be well taken. Efforts on behalf of five of the seven children were made substantially ahead of the opening of the current session to enroll them in particular schools, and there were both conferences and correspondence with the school authorities in this regard (Tr. 27, 28, 58, 60, 61, 96; Exs. 2-A, 3-A & F). Then, and at the opening of this session, these efforts were frustrated, not because of lack of qualifications or lack of space in the schools to accommodate them, but because of the administrative determination that assignments were the province of the Pupil Placement Board. There was ample opportunity for the authorities to investigate these claims, if investigation was indeed necessary, and to ascertain whether there were additional reasons why they should not be so admitted. More fundamentally, the appellants cannot now support a claim to additional time to investigate eventualities that under previous decrees they were already bound to anticipate and prepare for. For the District Court to have granted the request would have been to ignore "the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis," *Brown* v. *Board of Education*, 349 U. S. 294, 300 (1955), and "the known urgency of the situation." (App. 40). It would have been tantamount to deferring them to the next enrollment date.

It seems evident that appellants are presenting contentions as to developments that, in any event, produced no injury. The District Court expressed this opinion at the outset, but safeguarded their right to the protection of the Court should it develop that their rights became jeopardized. (App. 39-40). It appears that no injury resulted, and certainly no further request was made to the District Court for indulgence.

The proceedings under review were not a new case, presenting novel questions, but rather were merely the latest phase of litigation pending for more than a year and involving issues and contentions well known to all. Indeed, on July 27, just slightly more than a month before the September 11 hearing, counsel had extensively argued the principal question in the case—the effect of the Pupil Placement Act upon the Arlington situation. From the beginning appellants have been represented by able and experienced counsel well versed in the law and quite capable of adequately representing the interests of their clients. We think they did their job well, and now have no cause for complaint.

## CONCLUSION

For the reasons stated herein, it is respectfully submitted that the judgments appealed from should be affirmed.

Respectfully submitted,

EDWIN C. BROWN,
1200 Cameron Street,
Alexandria, Virginia.

OLIVER W. HILL,
118 East Leigh Street,
Richmond 19, Virginia.

SPOTSWOOD W. ROBINSON, III,
623 North Third Street,
Richmond 19, Virginia.

*Counsel for Appellees.*

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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No. 7543

---

COUNTY SCHOOL BOARD OF ARLINGTON COUNTY

*Plaintiff*

*versus*

THOMPSON, etc.

*Appellees*

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*Appeal From The United States District Court For The Eastern District of Virginia, Alexandria Division*

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APPENDIX FOR THE APPELLEES

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## EXCERPTS FROM REPORTER'S TRANSCRIPT

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Testimony of Robert A. Eldridge, Jr.

(tr 23) Q. Did you have any special reason for not signing the form?

A. I governed my action for two reasons. I had read in (tr 24) the papers where the form itself had been considered to be unconstitutional, and second, it appeared to me that it wouldn't be any use to fill out the form anyway because I noticed that at one portion of the form it says that it gave me the impression that the Board had the option to send your student to any school that it so desired, and it was my idea to have my child in the school nearest to his home.

Q. That was your reason for not executing the form?
A. That's right.

Q. If the Court please, we would like to offer into evidence the form that was given to Mr. Eldridge by Mrs. Vance. Any objection?

THE COURT: Is there any objection to it?

MR. BALL: No, sir.

THE COURT: Let it be admitted.

THE CLERK: Plaintiff's No. 1.

(The Clerk so marked the form as Plaintiff's Exhibit No. 1 in evidence.)

MR. BROWN: Plaintiff's Exhibit No. 1.

BY MR. BROWN:

Q. Mr. Eldridge, did there come a time when you presented your child to any other school in Arlington County?
A. Yes, I did on the opening day of school. I decided to go to the nearest school to my house, which was a block

(tr 25) and a half. It is known as the Fillmore Elementary School. It is located on Fillmore Street and I took my boy there and I was met at the door by a Mrs. Smith, who told me that I would have to—I think her reason, she told me that I would have to go to the Clay Elementary School to register my boy which was at—

THE COURT: Have to go where?

THE WITNESS: To the Clay Elementary School, located at Seventh and Holland Street, North Arlington. She stated her reason for sending me there was because she didn't have any more placement forms, so I proceeded to go to this school at Seventh and Holland Street where I asked could I register my boy to go to the school nearest his home, and I was told that I would have to fill out placement forms.

BY MR. BROWN:

Q. Was this the opening day of school?

A. That's right. At that time I did take my, the birth certificate of my child, and his former record of his school that he previously attended.

Q. You had those with you?

A. On each occasion.

Q. Each occasion?

A. Each occasion I had that with me.

* * *

(tr 27) * * *

Q. Mr. Eldridge, did you do anything else in order to get your child into school?

[redacted]

A. Yes, I wrote a letter to the Superintendent. I wrote

[redacted]

Q. [redacted]

A. [redacted]

Q. Do you know, did you receive any response to that

letter?

(r 32) A. Yes, I did.

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

(r 33) • • •

Q. Where is the Fillmore School in relationship to your

[redacted]

[redacted]

[redacted]

THE COURT: [illegible]

Testimony of Arthur M. Cooley, Sr.

(tr 82) * * *

Testimony of T. Edward Rutter

Superintendent of Schools, Arlington

Q. Now you say it is a junior-senior high school. What grades does that school have?

A. Sixth through twelve.

Q. And which of those grades are junior high school grades and which are senior high school grades?

A. Six through nine are junior high school, and tenth through twelve are senior high school.

Q. Now let me clear this up. Under your Arlington School System the first six grades are elementary school grades. Am I correct in that regard?

A. That's correct.

Q. And grades seven through nine are the junior high school grades?

A. That's correct.

Q. And nine through twelve are the senior high school grades?

(tr 113) A. Right.

Q. That is true in both Negro and white schools?

THE COURT: Ten through twelve, is it not?

THE WITNESS: Ten through twelve.

MR. ROBINSON: I'm sorry.

BY MR. ROBINSON:

Q. Is there any other Negro senior high school facility in Arlington County other than a part of the Hoffman-Boston facility?

A. No.

Q. Is there any other Negro junior high school facility in Arlington County other than a part of the Hoffman-

Boston facility?

A. No.

Q. Is Hoffman-Boston more than a single school plant or is it within itself a single educational unit and in a sense that it is a single building?

A. It is a single coordinated educational unit.

Q. How many buildings?

A. Well, there is really one building, although we have a temporary structure situated within about twenty feet of the building so there actually are two buildings on the site.

Q. And what is this temporary structure being used for?

A. Well, it has been used from time to time for various (tr 114) purposes. I believe most recently for art and music.

Q. How temporary is this structure? By that I mean how long has it been used for these various purposes?

A. I don't know the number of years but I can say it has been used for this purpose since I have known the school in 1950.

Q. Since 1950?

A. Yes.

Q. At least for the period of the last six or seven years?

A. Yes.

Q. All right. Now what are the names of the three remaining Negro schools in Arlington County, all of which are elementary schools?

A. The first is Hoffman-Boston Elementary School, located very close to the Hoffman-Boston Junior-Senior High School. The other is the Drew Kemper School, composed of two school buildings but is administered as one elementary school, and the last is the Langston Elementary School.

Q. All right, sir. Now without undertaking to name them, how many high school facilities do you have in Arlington County attended exclusively at the present time by white students?

A. Two.

Q. What are the names of those two schools?

A. Washington-Lee High School and Wakefield High School.

(tr 115) Q. And how many presently all-white junior high school facilities in the county?

A. May I name them one at a time because I'm not sure that I can give you the exact number?

Q. Surely.

A. In the northern part of the county we have Williamsburg, Stratford, Swanson; in the central part of the county we would have Thomas Jefferson and in the southern part of the county Kenmore, and a new junior high school presently organized this year which will be known as the Gunston Junior High School.

Q. How many?

A. I believe that was seven, was it not?

Q. Seven. Do you recall the exact number—

THE COURT: Let us see. I have six, Williamsburg, Stratford, Swanson, Jefferson, Kenmore, and Gunston.

THE WITNESS: I'm sorry. That is right.

THE COURT: Six?

THE WITNESS: I believe that is correct.

BY MR. ROBINSON:

Q. How many all-white elementary schools do you have?

A. I do not know the precise number, sir, but it would be approximately thirty-seven or thirty-eight.

(tr 116) Q. All right, sir. Now, Mr. Rutter, are you familiar with that map that is posted on the board over there?

A. Very familiar.

Q. Have you had an occasion to examine that map to be in a position to tell me whether or not it is accurate in so far as the location of your schools are concerned and the boundaries, of the present boundaries of your school districts?

A. I believe that it is, sir.

Q. Would you walk over to the map and examine it and state to me positively, if you can, whether or not it does accurately disclose the location of schools and school boundaries?

A. Yes, I believe that it does.

Q. How many school districts do you have as shown on that map, Mr. Rutter?

A. This map is an attempt to demonstrate and show the number of secondary school districts. We have a similar map showing the elementary districts.

Q. Might I ask you this. When you say secondary, do you include only the senior high schools or do you include the junior high schools as well?

A. That's right.

Q. Junior high school, junior and senior?

A. That's right.

Q. All right. Now how would, how many senior high school districts do you have?

(tr 117) A. Three.

Q. Would you name them, please?

A. Hoffman-Boston, Washington-Lee and Wakefield.

Q. Are these school districts in each instance all located in a geographically contiguous fashion or do you have any instance of a school district being divided into two or more parts and the parts not being geographically contiguous?

A. We have one like the last you have just described.

Q. All right, and which one is that?

A. Hoffman-Boston.

Q. All right. What is the difference, if any, between the school districts so far as the racial classification of the student residing in those districts may be concerned?

A. The Hoffman-Boston District is designated as a district for our colored boys and girls on the high school level.

Q. And for that purpose only, am I correct?

A. That is correct.

Q. In assuming.

And that district I understand you to say has two parts?

A. That's correct.

Q. Would you show me those two parts?

A. (Pointed.)

(tr 118) THE COURT: Would you refer to, for the purposes of the record—call one of them north?

THE WITNESS: For the purpose of the record the northern section is just south of Lee Highway, the southern section is that portion of land surrounding the Hoffman-Boston Junior-Senior High School.

BY MR. ROBINSON:

Q. Now the Hoffman-Boston Junior-Senior High School is physically located within the southern of the two Hoffman-Boston School Districts?

A. That's right.

Q. There is no Negro junior or senior high school facility geographically situated within the boundaries of the northern Hoffman-Boston School District?

A. That's correct.

Q. How much distance would you say there is approximately between the northern and the southern, say, estimating as best you can from, say, the geographical centers of those districts, how much distance would you say that there is approximately between the northern and the southern sections of the Hoffman-Boston School District?

A. Well, I would judge it to be approximately five miles. I believe the total distance from the northern part of the (tr 119) county to the southern is seven and it would appear to me would be about five, five and a half or six miles.

Q. Is there any other district in Arlington County at the secondary level embracing Negro students other than the Hoffman-Boston School District?

A. No.

Q. Now, and that is true with reference to the junior high schools as well as the senior high schools?

A. That is correct.

Q. Come back up here.

Now as I understand you, Mr. Rutter, the Hoffman-Boston School District with its two parts for secondary students is based entirely upon the race of the student residing for school administrative purposes within those dis-

tricts; am I correct in that?

A. I believe that is correct.

Q. All right. Now how do you figure out school districts for white students in Arlington County?

A. It is done in terms of the capacity of buildings to house a given number of children.

in a number of instances I believe, in the past, of course, in schools happened quite by schools that are not necessarily the closest to their place of residence.

Q. [illegible] that is true of the school that the [illegible] attends, or that their parents [illegible] have children in some part of all of Arrington in that elementary school district?

A. [illegible]

Q. [illegible] this [illegible] with this [illegible] Arrington [illegible] in the [illegible] in the [illegible] in this [illegible]

A. [illegible]

Q. All right. Now, Mr. Brown, do you happen to have with you a map showing the elementary school districts of Arrington County?

A. Yes, I do.

Q. Do you have one that we might [illegible]

A. Yes.

Q. Perhaps from you for purposes of putting in the record [illegible] the understanding that you might use it [illegible]

A. Very good.

Q. All right, sir.

Anybody want to see this?

Mr. [illegible], I hand you this document and I ask you to examine it and identify it [illegible] (Handed)

A. This is a map of Arrington County as [illegible] has been (tr 122) superimposed thereon [illegible] the various elementary school districts.

[redacted]

A. That's right.

[redacted]

Q. Local Board anything to do with making up this year's maps?

A. We have not made any map this year, sir, inasmuch as we no longer, of course, have any jurisdiction in the placement of children in the schools so we have not made the maps this year.

THE COURT: You mean by that there are for this session no district, school districts in Arlington County?

THE WITNESS: The districts are, sir, those that are shown or the map, but the map is last year's map and we have made no changes in the map this year.

THE COURT: Well, do you still observe these district lines for any purpose whatsoever?

THE WITNESS: Well, presumably they are observed (tr 133) by the Pupil Placement Board, sir.

MR. ROBINSON: Mr. Rutter, by that do you mean that the Pupil Placement Act had the effect when it went into operation, had the effect of freezing all students, white and Negro, in the schools that they were attending on the effective date of the Act, is that what you have reference to in your last answer to the Court's question?

THE WITNESS: That the description that you have just given seems to me to be quite similar to a clause or a sentence or two, a paragraph in the law itself.

MR. ROBINSON: By that I mean and I am trying to find out now what the actual operation of this thing has been in Arlington County when the law went into effect, it had the effect in your interpretation of it, it had the effect of keeping all students in the, who were in school, in the schools that they attended when the law went into effect, of keeping them there unless the Pupil Placement Board

transferred them to some other school?

THE WITNESS: That is my understanding.

(tr 134) MR. ROBINSON: Are you familiar with the actionable results of assignments of Arlington school children made by the Pupil Placement Board? I mean do you know in a general sort of way whether or not so far as the students are concerned the Pupil Placement Board has generally observed the old 1956-57 school district lines in making its own assignments in those instances where it has made assignments?

THE WITNESS: That would be my general observation. Of course, I couldn't be familiar with all the forms and it is perfectly possible that some children who may have attended a given school last year were not assigned to the same school this year.

MR. ROBINSON: But so far as you know, the statement that I just made is correct?

THE WITNESS: I believe that is correct.

MR. ROBINSON: Do the school authorities or the Principals or any other agents, employee or representative of the School Board, or Division Superintendent of Arlington County make any recommendations to the Pupil Placement Board as to the school that a child should be assigned (tr 135) to?

THE WITNESS: Absolutely not.

MR. ROBINSON: That is all.

MR. HILL: Let me see the plaintiff's Exhibit 5, I think it is.

MR. ROBINSON: Mr. Rutter, of course, you are familiar with this form, are you not?

THE WITNESS: Indeed I am, sir.

MR. ROBINSON: I am calling your attention to a section of the form that reads as follows: Information and recommendations from local school board, if child is entering school for the first time is date of child—wait a minute. No, I beg pardon. Right under that, big bold faced heading that I have just read to you, the third printed line down, recommend to school to which pupil should be assigned. Am I correct in understanding from what you have just said that your employees in Arlington County do not make a recommendation to the Pupil Placement Board as to the school to which a particular student should be assigned as is requested by that form?

(tr 136) THE WITNESS: That is correct. We do not, and we did not on that form.

MR. ROBINSON: That is all. Thank you, Mr. Rutter.

* * *

THE COURT: Let me ask Dr. Rutter one question. Doctor, will you stand right up where you are?

Are you familiar with these seven instances that students' (tr 137) applications, that we are considering today?

THE WITNESS: Yes, sir.

THE COURT: To your knowledge was any one of them disqualified by reason of his scholastic records to enter the school to which he applied?

THE WITNESS: I would have no way of knowing that, Your Honor. In other words, I didn't attempt to secure that information.

THE COURT: You cannot answer that?

THE WITNESS: No, sir.

THE COURT: All right.